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IN THE
COURT OF APPEALS OF INDIANA

Kristen Alyse Gober,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 3, 2021

Court of Appeals Case No.
20A-CR-1651

Appeal from the
Lake Superior Court

The Honorable
Diane Ross Boswell, Judge

Trial Court Cause No.
45G03-1803-F1-5

Kirsch, Judge.

- [1] Kristen Alyse Gober (“Gober”) pleaded guilty to two counts of neglect of a dependent resulting in death¹ as Level 1 felonies and one count of neglect of a

¹ See Ind. Code § 35-46-1-4(a), (b)(3).

dependent² as a Level 6 felony and was sentenced to fifty-one years executed.

Gober appeals her sentence and raises the following dispositive issues:

- I. Whether the trial court abused its discretion in determining the aggravating circumstances;
- II. Whether the trial court abused its discretion in imposing consecutive sentences.

[2] We affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[3] In March 2018, Gober was living in an apartment in Gary, Indiana with her three children, J.G., Kh.G, and Ka.G (“the Children”). *Appellant’s App. Vol. 2* at 19, 67. At that time, J.G. was six years old, Kh.G. was four years old, and Ka.G. was two years old. *Id.* at 19. On March 24, 2018, at approximately 7:00 p.m., Gober left her apartment before dinner and went downstairs to the apartment of Jonas Pierce (“Pierce”), the building’s maintenance man, with whom she was in a relationship. *Id.* at 19-20, 67. Gober left the Children alone in the locked apartment. *Id.* at 19-21. While at Pierce’s apartment, Gober drank vodka, and the two got into an argument about their relationship. *Id.* at 20, 67. Pierce asked Gober to leave the apartment, but Gober refused, so Pierce allowed her to spend the night in his apartment. *Id.* at 20.

² See Ind. Code § 35-46-1-4(a).

[4] The next morning, on March 25, 2018, the Children woke up, and in attempting to make breakfast for themselves, they played with fire on the stove. *Id.* at 19; *Tr. Vol. 2* at 33, 35-36. In doing so, either a pair of jeans or a blanket caught on fire and “was smoking real bad.” *Appellant’s App. Vol. 2* at 19; *Tr. Vol. 2* at 33. The Children were afraid and put the burning item in a bedroom closet. *Appellant’s App. Vol. 2* at 19; *Tr. Vol. 2* at 33-34. The Children then hid under a blanket in Gober’s room. *Appellant’s App. Vol. 2* at 19. J.G. came out from under the blanket, saw a lot of smoke, and ran out of the apartment. *Id.* The burning item ignited “combustible materials inside the closet” and quickly spread throughout the apartment. *Id.* at 19, 20; *Tr. Vol. 2* at 33, 34.

[5] When Pierce woke up at approximately 10:00 a.m. on the morning of March 25, 2018, Gober was still in his apartment, and Pierce went into the bathroom to get ready for the day. *Appellant’s App. Vol. 2* at 20. While Pierce was in the bathroom, the apartment’s fire alarm went off, and he exited the bathroom to attend to the alarm and noticed that Gober had left. *Id.* at 19, 20. Gober did not tell Pierce that her children were in her upstairs apartment before leaving. *Id.* at 20. Pierce exited his apartment and saw Gober leave the building through the back exit. *Id.* at 19. She told him that the fire was in her apartment. *Id.* Pierce began to go up the stairs to check the origin of the fire and observed J.G. coming down the stairs without his glasses on and without a shirt. *Id.* at 19, 20. J.G. told Pierce that his siblings were still in the apartment. *Id.* at 19.

[6] J.G. did not see his mother when he escaped the fire and had not seen her at all that day. *Id.* After Gober exited the apartment building, she sat down in the

playground area. *Id.* at 20. She later told law enforcement that she could not watch the fire because she thought her children were dead, so she began walking away and found someone to drive her to a nearby McDonald's. *Id.* at 20-21. Gober did not inform the firefighters on the scene that her children were in the apartment, and she did not call for help because she thought it was a "lost cause." *Id.* at 20. Although J.G. was able to escape the apartment, Kh.G. and Ka.G. were not, and they perished in the fire. *Id.* at 19, 21; *Tr. Vol. 2* at 34, 36-37. When the fire was extinguished, their bodies were discovered in the living room of the apartment, and it was later determined that Kh.G. and Ka.G. "died of smoke inhalation." *Appellant's App. Vol. 2* at 21; *Tr. Vol. 2* at 34, 36-37. The temperature of the living room would have been between 300 and 400 degrees during the fire. *Tr. Vol. 2* at 41. The fire affected the residents of the other apartments, and all of the residents of the eighty units were displaced. *Id.* at 29. In one instance, a four-year-old child in another apartment was forced to jump from a fourth story window in order to escape the fire. *Id.* at 40.

[7] Gober was arrested at the McDonald's shortly after the fire and was interviewed by the police. *Appellant's App. Vol. 2* at 19-21. During her interview, she told police that, on the evening of March 24, she had gone downstairs to do laundry and then went to Pierce's apartment for an hour or two while the children were sleeping but that she later went back upstairs to her apartment and slept in the Children's bedroom. *Id.* at 20. She also told police that, when she woke up on March 25, she again went downstairs to do laundry and left the Children sleeping in the apartment. *Id.* Gober claimed that she

went upstairs when she noticed the smoke and tried to open the door but was not able to because of the smoke and flames. *Id.* She said that she could hear her children and told them to come out. *Id.* Gober said that she was at the door for approximately five minutes trying to get the children out of the burning apartment. *Id.* The detective that interviewed Gober observed that her clothing did not smell of smoke. *Id.* During the interview, Gober told the police that she “she did the best that she could trying to save [the Children] and that it was a lost cause because the whole apartment was engulfed.” *Id.* at 21. Gober also stated that, in the past, she left the Children alone in the apartment several times a week, and there had never been a problem. *Id.* at 20, 21.

[8] On March 27, 2018, the State charged Gober with two counts of Level 1 felony neglect of a dependent resulting in death, one count of Level 6 felony neglect of a dependent, and one count of Class B misdemeanor possession of marijuana. *Id.* at 17-18. On February 3, 2020, Gober pleaded guilty to two counts of Level 1 felony neglect of a dependent resulting in death and one count of Level 6 felony neglect of a dependent. *Id.* at 108, 111, 115; *Tr. Vol. 2* at 11-14, 74. Under the plea agreement, the sentences for the Level 1 felonies were capped at thirty years, and the sentence for the Level 6 felony was capped at one year, which are the respective advisory sentences for each level of felony. *Appellant’s App. Vol. 2* at 64-65.

[9] At sentencing, the trial court found three aggravating factors and three mitigating factors. *Appellant’s App. Vol. 2* at 108, 111-12; *Tr. Vol. 2* at 74-76. The trial court found that the nature and circumstances of the crime was an

aggravating factor and noted that “this crime not only affected [Gober’s] three children . . . but the entire complex, and . . . that entire neighborhood.”

Appellant’s App. Vol. 2 at 108, 111-12; *Tr. Vol. 2* at 75. The trial court further stated that “the whole community was devastated . . . and directly those people who lived in that . . . complex who had to lose their belongings, be relocated, all the stuff that went along with having to get out of there.” *Tr. Vol. 2* at 75. The trial court found the “significant trauma to the surviving victim” to be an aggravating factor because “[h]e’s never going to forget that fire. He’s never going to forget that he . . . wanted to help . . . his siblings get out of that room and he couldn’t. He’s going to carry that burden with him for the rest of his life.” *Appellant’s App. Vol. 2* at 108, 112; *Tr. Vol. 2* at 76. The trial court also found “[t]he youthful age of [Gober’s] two children that died in the fire” to be an aggravating factor. *Appellant’s App. Vol. 2* at 108, 112; *Tr. Vol. 2* at 76. The trial court found as mitigating factors that Gober pleaded guilty, appeared to be remorseful, and had a minimal criminal history. *Appellant’s App. Vol. 2* at 108, 111; *Tr. Vol. 2* at 74. The trial court ordered Gober to serve twenty-five years for each of her convictions for Level 1 felony of neglect of a dependent resulting in death and one year for her conviction for Level 6 felony neglect of a dependent. *Appellant’s App. Vol. 2* at 109, 112, 115; *Tr. Vol. 2* at 80. The sentences were ordered to be served consecutively for an aggregate sentence of fifty-one years executed. *Appellant’s App. Vol. 2* at 109, 112, 115; *Tr. Vol. 2* at 80-81. Gober now appeals.

Discussion and Decision

[10] Sentencing determinations are within the trial court's discretion and will be reversed only for an abuse of discretion. *Harris v. State*, 964 N.E.2d 920, 926 (Ind. Ct. App. 2012), *trans. denied*. An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014), *trans. denied*. A trial court abuses its discretion if it: (1) fails "to enter a sentencing statement at all"; (2) enters "a sentencing statement that explains reasons for imposing a sentence -- including a finding of aggravating and mitigating factors if any -- but the record does not support the reasons"; (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration"; or (4) considers reasons that "are improper as a matter of law." *Anglemyer v. State*, 868 N.E.2d 482, 490-91 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). The relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. *Id.* at 491. The decision to impose consecutive sentences lies within the discretion of the trial court. *Gross*, 22 N.E.3d at 869 (citing *Gilliam v. State*, 901 N.E.2d 72, 74 (Ind. Ct. App. 2009)). A trial court is required to state its reasons for imposing consecutive sentences or enhanced terms. *Id.* A single aggravating circumstance may be sufficient to support the imposition of consecutive sentences. *Id.*

I. Aggravating Factors

[11] Gober argues that the trial court abused its discretion in its determination of all three of the aggravating factors found. Gober first asserts that the nature and circumstances of the crime should not have been found to be an aggravating factor because the impact on others can only be considered aggravating when the impact is of a nature not normally associated with the commission of the offense and is foreseeable to the defendant. She asserts that, with the crime of neglect, it may be foreseeable that some harm could have befallen the children if left alone, but “it was not foreseeable that some harm may come to others in the apartment building as that harm would not normally be associated with the commission of neglect.” *Appellant’s Br.* at 13-14. Gober next contends that the trial court’s consideration of the trauma experienced by J.G. was improper because the emotional and psychological effects are inappropriate aggravators unless the impact, harm, or trauma is greater than that usually associated with a crime. She argues that this was an improper aggravator because trauma to J.G. could not serve as an aggravator to Counts I and II, which pertained to different victims, and because there was no evidence to support that J.G. would carry this burden for the rest of his life. Gober lastly alleges that the trial court improperly used the age of the victims as an aggravating factor because the age of the victim is an element of neglect of a dependent and there was no further showing by the trial court to justify relying on the victims’ age.

[12] Gober pleaded guilty to two counts of Level 1 felony neglect of a dependent resulting in death and one count of Level 6 felony neglect of a dependent.

Appellant's App. Vol. 2 at 108, 111, 115; *Tr. Vol. 2* at 11-13. Per the terms of the plea agreement, both parties agreed that the maximum sentence that could be imposed for the Level 1 felonies was thirty years and the maximum sentence for the Level 6 felony was one year. *Appellant's App. Vol. 2* at 64. The trial court imposed a sentence of twenty-five years for each Level 1 felony conviction and a sentence of one year for the Level 6 felony conviction. *Id.* at 109, 112, 115; *Tr. Vol. 2* at 80. The sentences were ordered to be served consecutively, for an aggregate sentence of fifty-one years. *Appellant's App. Vol. 2* at 109, 112, 115; *Tr. Vol. 2* at 80-81. Therefore, Gober was sentenced to a term below the advisory sentence for the neglect of a dependent resulting in death convictions and was sentenced to the advisory sentence for the neglect of a dependent conviction. *See* Ind. Code § 35-50-2-4; Ind Code § 35-50-2-7. In sentencing Gober, the trial court found three aggravating factors and three mitigating factors, of which Gober takes issue only with the finding of the aggravating factors.

[13] Gober first challenges the determination that the nature and circumstances of the crime was aggravating factor. A trial court may not use a material element of the offense as an aggravating factor, but it may find the nature and particularized circumstances surrounding the offense to be an aggravating factor. *Caraway v. State*, 959 N.E.2d 847, 850 (Ind. Ct. App. 2011), *trans. denied*. In finding that the nature and circumstances of the crime were aggravating, the trial court specified, “this crime not only affected [Gober’s] three children . . . but the entire complex, and . . . that entire neighborhood.” *Appellant's App. Vol. 2* at 108, 111-12; *Tr. Vol. 2* at 75. The trial court further stated that “the whole

community was devastated . . . and directly those people who lived in that . . . complex who had to lose their belongings, be relocated, all the stuff that went along with having to get out of there.” *Tr. Vol. 2* at 75. The impact on others may qualify as an aggravator only where the defendant’s actions “had an impact on other persons of a destructive nature that is not normally associated with the commission of the offense in question and this impact must be foreseeable to the defendant.” *Comer v. State*, 839 N.E.2d 721, 727 (Ind. Ct. App. 2005), *trans. denied*.

[14] Gober’s crime of neglecting her children by leaving them alone in their apartment for fifteen hours led to a fire started by the Children, which quickly engulfed the whole apartment and resulted in the death of two of the Children, and it displaced the residents of the eighty units of the apartment complex. Further, after learning that the fire was in her apartment, instead of attempting to extricate her children from the apartment or even calling for help, Gober fled the scene and did not alert anyone that her children were still in the apartment. This impact on others was clearly of a destructive nature that is not normally associated with neglect of a dependent. The impact was foreseeable. It was foreseeable that leaving young children, all under the age of six, alone for fifteen hours in an apartment could result in the Children inadvertently starting a fire, and it was foreseeable that a fire in an apartment building could affect and impact all of the residents of the apartment complex. The trial court did not abuse its discretion in finding the nature and circumstances of the crime to be an aggravating factor.

[15] Gober next contests the finding that the significant trauma to the surviving victim was an aggravating factor. “[T]he emotional and psychological effects of a crime are inappropriate aggravating factors unless the impact, harm, or trauma is greater than that usually associated with the crime.” *Thompson v. State*, 793 N.E.2d 1046, 1053 (Ind. Ct. App. 2003). Here, the trial court specifically found that the trauma to J.G. should be an aggravating factor because “[h]e’s never going to forget that fire. He’s never going to forget that he . . . wanted to help . . . his siblings get out of that room and he couldn’t. He’s going to carry that burden with him for the rest of his life.” *Tr. Vol. 2* at 76.

[16] Initially, we find Gober’s contention that the trauma to J.G. was an improper aggravating factor because the trauma to one victim cannot aggravate the sentence for a crime committed against another victim to be misplaced. This aggravating factor was not used to enhance the underlying sentence for Gober’s Level 1 felony convictions, for which she received sentences under the advisory sentence. It was used to order that the sentences be served consecutively. Gober does not cite to any authority that supports her proposition that the trauma to one victim may not be used to order consecutive sentences when there are other victims.

[17] Although J.G. did not testify at the sentencing hearing, the State advised the trial court that in speaking to J.G., it learned that J.G. was “still quite traumatized by what happened and feels somewhat responsible because he wasn’t able to save his two-year old and four-year old siblings” and “that’s something he’s going to have to live with for the rest of his life.” *Tr. Vol. 2* at

44. Additionally, the fire investigator described exposure to smoke and fire as “unimaginable” and “terrifying” and said there is “zero visibility,” “it’s hot, there’s sounds, stuff falling from the fire melting” things in “the apartment or the room of origin or the building itself.” *Id.* at 37. He also described what it is like to breathe in smoke and said that it is a “sudden shock” and an “instant coughing reflex” where your body “automatically [wants] to cough and take a deep breath, causing you to inhale more smoke.” *Id.* at 38. The emotional harm and trauma suffered by J.G. was significantly greater than that usually associated with the crime of neglect of a dependent. J.G. was in an apartment that was engulfed in flames and filled with smoke. He experienced “unimaginable” terror. *Id.* at 37. He also feels responsibility and guilt for the death of his siblings because he was not able to save their lives. The trial court did not abuse its discretion in finding the trauma that J.G. suffered as an aggravating factor.

[18] Gober further argues that the young age of the victims could not properly be found to be an aggravating factor. “‘When the age of a victim constitutes a material element of the crime,’ the trial court cannot treat it as an aggravating circumstance unless it sets forth ‘particularized circumstances’ justifying such treatment.” *McCoy v. State*, 96 N.E.3d 95, 99 (Ind. Ct. App. 2018) (citing *McCarthy v. State*, 749 N.E.2d 528, 539 (Ind. 2001)). Although the neglect of a

dependent statute requires the victim to be under eighteen years of age,³ it does not necessarily require that victim to be of an age as young as the Children were in this case. *See Edwards v. State*, 842 N.E.2d 849, 855 (Ind. Ct. App. 2006) (finding that the age of the victim in a neglect of a dependent conviction could be used as an aggravating factor where the trial court considered the child's age of fifteen months in relation to the nature and circumstances of the crime). Here, Ka.G. was two years old at the time of her death, Kh.G. was four years old at the time of his death, and J.G. was six years old at the time of the fire. All were of a significantly young age and, at the time of the crime, were much younger than the threshold requirement of under eighteen years of age. It was clear from the record that the trial court considered the very young ages of the victims in relation to the nature and circumstances of the crime as a valid aggravating circumstance. The trial court, therefore, did not abuse its discretion in finding the youthful age of the victim as an aggravating factor or in the determination of any of the three aggravating factors.

II. Consecutive Sentences

[19] Gober argues that the trial court abused its discretion in ordering her sentences to be served consecutively. She first contends that, because the trial court imposed sentences less than the advisory sentence on each of her convictions, the aggravators and mitigators were in equipoise, and consecutive sentences

³ "Dependent" is defined as "an unemancipated person who is under eighteen years of age." Ind. Code § 35-46-1-1.

could not be ordered. She further asserts that the trial court abused its discretion in ordering an aggregate sentence of fifty-one years because her crimes constituted a single episode of criminal conduct as they arose out of the same facts and circumstances occurring at the same time and the same place. Therefore, because neither neglect of a dependent resulting in death nor neglect of a dependent is a crime of violence, Gober maintains that the trial court was constrained to impose an aggregate sentence of no more than forty-two years.

[20] The decision to impose consecutive sentences lies within the discretion of the trial court. *Gross*, 22 N.E.3d at 869. A trial court is required to state its reasons for imposing consecutive sentences or enhanced terms, and a single aggravating circumstance may be sufficient to support the imposition of consecutive sentences. *Id.* As discussed above, the trial court properly identified three aggravating factors, and because a single aggravating factor is sufficient to impose consecutive sentences, the trial court was within its discretion to order that Gober's sentences be served consecutively.

[21] As to Gober's argument that because the trial court imposed sentences less than the advisory sentence on each of her convictions, the aggravators and mitigators were in equipoise, and consecutive sentences could not be ordered, we disagree. In its oral sentencing statement, the trial court clearly stressed that the nature and circumstances of Gober's offenses, the trauma the offenses caused to the surviving victim, and the fact that the victims were of such a young age were significant and worthy of being applied to aggravate the sentence imposed. In reviewing the trial court's statements during sentencing, it is clear that the

aggravating and mitigating factors were not in equipoise, and we do not agree that that the trial court was constrained from ordering that the sentences be served consecutively.

[22] However, we do agree with Gober that the trial court erred in the length of the consecutive sentences ordered. The imposition of consecutive or concurrent terms is governed by Indiana Code section 35-50-1-2, which provides that, except for crimes of violence,

Except as provided in subsection (c), the total of the consecutive terms of imprisonment to which the defendant is sentenced for felony convictions rising out of an episode of criminal conduct may not exceed the following:

. . . .

(6) if the most serious crime for which the defendant is sentenced is a Level 1 felony, the total of the consecutive terms of imprisonment may not exceed forty-two (42) years.

Ind. Code § 35-50-1-2(d). “An ‘episode of criminal conduct’ means offenses or a connected series of offenses that are closely related in time, place, and circumstance.” Ind. Code §35-50-1-2(b).

In determining whether multiple offenses constitute an episode of criminal conduct, the focus is on the timing of the offenses and the simultaneous and contemporaneous nature, if any, of the crimes. [A]dditional guidance on the question can be obtained by considering whether the alleged conduct was so closely related in time, place, and circumstance that a complete account of one

charge cannot be related without referring to the details of the other charge.

Grimes v. State, 84 N.E.3d 635, 643 (Ind. Ct. App. 2017) (quoting *Williams v. State*, 891 N.E.2d 621, 631 (Ind. Ct. App. 2008) (internal citations and quotations omitted)), *trans. denied*.

[23] Here, Gober's convictions arose out of her actions in leaving her three young children alone in their locked apartment for fifteen hours, during which time, the Children inadvertently started a fire that engulfed the apartment and resulted in the death of two of the Children. Although she was charged with three separate counts of neglect of a dependent, this was because there were three victims. However, her convictions arose out of the same facts and circumstances occurring at the same time and the same place. Her actions as they related to each victim occurred simultaneously and contemporaneously. Therefore, we conclude that her convictions arose out of a single episode of criminal conduct. Because neglect of a dependent resulting in death is not a crime of violence as specified in Indiana Code section 35-50-1-2(a), the trial court was constrained to impose an aggregate sentence of no more than forty-two years under subsection (d). The trial court abused its discretion in imposing an aggregate sentence of fifty-one years, and we, therefore, reverse Gober's sentence and remand for resentencing with instructions for the trial

court to limit the aggregate term of imprisonment to not more than forty-two years.⁴

[24] Affirmed in part, reversed in part, and remanded with instructions.

Bradford, C.J., and May, J., concur.

⁴ Gober also raises the contention that her sentence is inappropriate in light of the nature of the offenses and the character of the defendant. However, because we remand the case for resentencing, we do not reach her challenge to the inappropriateness of her sentence.